

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

JOSEPHINE BENSON,

Plaintiff,

-vs-

CASE NO.: 2:18-cv-02874-MSN-cgc

OCWEN LOAN SERVICING, LLC,

Defendant.

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JOINT MOTION TO STAY PROCEEDINGS

COME NOW, Plaintiff, Josephine Benson and Defendant, Ocwen Loan Servicing, LLC, by and through their undersigned counsel, and hereby file this Joint Motion to Stay Proceedings and in support thereof, state as follows:

1. Currently, the undersigned law firm for Plaintiff, Morgan & Morgan, Tampa, P.A., and the Defendant, Ocwen Loan Servicing, LLC, have twenty (20) cases pending in the U.S. District Court for the Southern District of Florida which were recently transferred to the Honorable Judge Robin L. Rosenberg for pre-trial purposes.

2. A significant legal issue in this case and the cases before Judge Rosenberg concerns whether the calls alleged by Plaintiff were made with an “automatic telephone dialing system” as defined by the Telephone Consumer Protection Act. The law concerning the definition of an ATDS is unsettled after the decision of the D.C. Circuit Court of Appeals in ACA Int’l v. FCC, 885 F.3d 687 (2018).

3. In light of the uncertainty concerning the definition of an ATDS, Judge Rosenberg has stayed the cases before her for a period of six (6) months “pending forthcoming guidance from the FCC” pertaining to the ATDS definition. See, Evans v. Ocwen Loan Servicing, LLC, 9:18-cv-81394-RLR (SDFL), at DE 14. The parties believe that this case similarly should be stayed for six (6) months to allow time for the FCC to issue additional guidance with regard to its definition of an ATDS, so that the parties are not spending time briefing, and the Court is not spending time deciding, motions based on law which may change significantly in the near future.

4. In addition, the parties have agreed to mediate this case and the cases before Judge Rosenberg. The parties therefore seek to stay this litigation so they may focus their time and resources on potentially resolving all claims in mediation and without further burdening the Court.

5. Morgan & Morgan and Ocwen intend to file identical Motions to stay in other pending cases: *Gonzalez v Ocwen Loan Servicing, LLC*, 5:18-cv-00340, before Judge Moody (MDFL), and *Boyer v Ocwen Loan Servicing, LLC*, 6:18-cv-01676, before Judge Byron (MDFL).

6. Therefore, the parties respectfully request that this Court stay all proceedings until July 12, 2019, at which time the parties shall file a Joint Notice respecting the status of the FCC’s deliberations.

7. This Motion is made in good faith and not for the purpose of delay.

WHEREFORE, the parties respectfully request this Honorable Court enter an Order granting this Joint Motion to Stay Proceedings and stay this case for a period of six (6) months pending the FCC's issuance of additional guidance regarding the definition of an ATDS.

Dated: January 23, 2019

Respectfully submitted,

/s/Frank H. Kerney, III, Esquire

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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that a Notice of this filing will be sent to the following by operation of the Court's Electronic Filing System: Adam C. Ragan, Esquire, Hunter Andrews Kurth, LLP, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202 (aragan@hunton.com).

/s/Frank H. Kerney, III, Esquire

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Counsel for Plaintiff